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**Attorney for Plaintiffs**

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IN RE: VOLKSWAGEN “CLEAN DIESEL”  
MARKETING, SALES PRACTICES, AND  
PRODUCTS LIABILITY LITIGATION

Case No. 3:15-md-02672-CRB

This Document Relates to:

Case No. 3:17-cv-05153

MARK AZAM et al.

Plaintiffs

**PLAINTIFFS’ MOTION FOR AN  
ORDER REMANDING THIS CASE TO  
TEXAS STATE COURT**

vs.

The Honorable Charles Breyer

Date:

Time:

VOLKSWAGEN GROUP OF AMERICA,  
INC. et al.

Defendants

Complaint Filed: October 14, 2015

**MOTION**

Plaintiffs respectfully move the Court for an order remanding this case to the District Court for Travis County, Texas, the state court from which it was removed. First, there is no subject matter jurisdiction based on diversity of citizenship because Plaintiff Jo-Ann Beveridge is, and has been since September 1, 2016, a citizen of the Commonwealth of Virginia and thus has the same citizenship as Volkswagen Group of America, Inc., which maintains its principal place of business in Virginia. As this Court is well aware, in order to remove a case on the basis of diversity jurisdiction, there must be a diversity of citizenship both at time of the filing of the complaint **and at the time of removal.** See *Strotek Corp. v. Air Transp. Ass'n. of Am.*, 300 F.3d 1129, 1131–32 (9th Cir. 2002) (“Thus, we start with the core principle of federal removal jurisdiction on the basis of diversity—namely, that it is determined (and must exist) as of the time the complaint is filed and removal is effected.”). Because there is no diversity of the parties, this Court lacks jurisdiction over this matter and must remand this case back to state court.

Second, this motion is based upon the grounds that this action was improperly removed pursuant to 28 U.S.C. § 1446(c)(1), which prohibits removal upon the grounds of diversity jurisdiction more than one year after the commencement of a lawsuit. The Notice of Removal filed by Defendant Volkswagen Group of America, Inc. was filed almost 22 months after the commencement of this action and was thus improper.

The motion is based upon the memorandum of points and authorities, the Declaration of Craig M. Patrick filed concurrently herewith, and upon such other and further oral or documentary evidence as may be adduced at the hearing of the motion.

1 Dated: September 14, 2017

2 Respectfully submitted,

3 /s/ Charles Miller

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21 **ATTORNEYS FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 14<sup>th</sup> day of September 2017, I filed the foregoing from the Service List and a copy of has been served on all Parties required to be served by electronically filing with the Clerk of the Court of the U. S. District Court for the Northern District of California, San Francisco Division, by using the CM/ECF system. In addition, Plaintiffs provided a copy of the foregoing to the following persons via email:

**Via email at vhartline@hdbdlaw.com**

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